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Sensitive But Unclassified, Not for Internet Distribution

[1](#). (SBU) Summary. Information Communications and Technology (ICT) Officer met with the Independent Communications Authority of South Africa (ICASA), industry analysts, and ICT firms to discuss the ICT regulatory environment in South Africa. Officials noted that ICASA faced major challenges in implementing policies to increase liberalization in the sector given the historic dominance of state-controlled Telkom South Africa. The Department of Communications (DOC) has a history of impeding ICASA mandates, which have led to considerable delays in licensing processes. They cited technical skills shortages and the continued need for regulatory capacity building as the greatest area of challenge for the regulatory agency. ICASA could benefit from a round of Federal Communications Commission (FCC) technical assistance workshops. End Summary.

ICASA Agrees With Industry Comments

[2](#). (SBU) ICT Officer met with officials at ICASA to discuss industry comments USTR has received concerning the regulatory environment in South Africa (Reftel A). ICASA officials generally agreed with the industry comments and identified major challenges in increasing liberalization in the sector. ICASA is in the process of implementing new policies intended to improve the competitiveness, but officials have acknowledged that industry criticism regarding regulatory independence and delays in licensing were not misplaced (Reftel A). They cited South African Government (SAG) interference and a shortage of technical capacity at ICASA to effectively address spectrum allocation and price-structuring for call termination fees as a cause for delays in licensing and regulatory decision-making processes.

Implementation of Liberalization
Policies Get Off to a Slow Start

[3](#). (SBU) The SAG first began pursuing "managed liberalization" of the industry in 1996. However, it was not until the Telecommunications Amendment Act of 2001 and the Electronic Communications Act (ECA) of 2005 were passed that major strides were made to end state-controlled Telkom's monopoly. Previously, Telkom enjoyed a protected monopoly

status for the development of both fixed-line and mobile ICT networks and for the provision of services. After lengthy delays in implementation of the Telecommunications Act, a second national operator Neotel began operations in December 2005.

14. (U) The ECA was promulgated to further increase liberalization in the sector and ICASA was charged with its implementation. The ECA tasked ICASA to issue new licenses to Value-Added Network Service (VANS) providers (i.e., mobile and internet service providers). ICASA was also required to ensure that licensees have no special privileges over one another. However, due to interventions by the DOC, ICASA missed the original November 2007 time-frame to issue these licenses. ICASA finally awarded these licenses in January 2009. The ICT market is expected to become more competitive in 2010 once the associated spectrum is allocated sometime in late 2009, which will allow these new licensees to develop national networks.

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15. (SBU) Additional legislation was passed in June 2006 to resolve remaining barriers in this sector, including the DOC's failure to empower ICASA. The ICASA Amendment Bill provided some independence to ICASA, but the fact that the DOC must approve ICASA's funding allows it to influence ICASA. ICASA has begun to address technical capacity problems, has fully staffed all vacant executive management positions, and has revamped its website to improve public access to ICASA notices. Critics believe ICASA needs to be further strengthened to better carry out its regulatory mandates.

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Telkom Retains Dominant Market Position
But Is Starting to Face Competition

16. (SBU) U.S. and local ICT companies, industry analysts, and the media remain critical of the lack of competitiveness in the South African ICT market. Telkom continues to maintain a dominant position in the provision of value-added and basic ICT services despite the passage of the ECA. South Africa has some of the highest telecommunications prices in the world, mainly due to Telkom's historic control of the underlying ICT network infrastructure. Neotel is developing its own national network as an alternative to Telkom-controlled infrastructure, which has brought some price competition to the market.

17. (SBU) SAG recently announced that it would allow India-based Tata Communications to increase its stake in Neotel to gain a 56 percent controlling share. The SAG also approved the sale of Telkom's Vodacom shares to UK-based parent company Vodafone. The transaction will give Vodafone a 65 percent controlling share and allow Telkom and Vodacom to pursue independent strategies that will increase competition in the mobile sector. The DOC also started addressing some of the problems facing VANS providers through limited liberalization policies that were initiated in February 2005. As a result, mobile operators are allowed to use any fixed-lines in the provision of their service, VANS can be offered through non-Telkom infrastructure, and VANS providers are allowed to provide voice services. In addition, private ICT network operators were allowed to sell spare capacity.

Department of Communications Continues to
Pursue "Managed Liberalization" Policy

18. (SBU) The DOC continues to champion state-owned entities and state-sponsored ICT projects. Minister Ivy

Matsepe-Casaburri has publicly advocated a policy of "managed liberalization," which has the effect of hampering efforts to increase competition and ICASA independence. She delayed the ICASA VANS license conversion process through months of legal battle to impede VANS from acquiring the new individual electronic communications network service (I-ECNS) licenses required to develop national networks.

¶9. (SBU) The Pretoria High Court ruled in August 2008, that Altech Autopage Cellular had the right to convert its VANS license into an I-ECN license. The ruling also gave other VANS the right to develop and operate their own communications networks, previously the preserve of large industry players such as Telkom, Neotel, Vodacom, MTN, and Cell-C. However, the DOC appealed the court ruling, arguing that the DOC's "managed liberalization" policy would be seriously undermined if VANS licensees were allowed to obtain I-ECNS licenses through the license conversion process. DOC also threatened to issue a policy directive to ICASA empowering it to implement an invitation-only application process for a limited-number of new I-ECNS licensees in accordance with the DOC's managed liberalization policy.

¶10. (SBU) The DOC interventions delayed the announcement of I-ECNS licenses. The High Court rejected the DOC's appeal on all points in October 2008. The Minister finally conceded and announced that she would withdraw legal challenges to the Qand announced that she would withdraw legal challenges to the conversion process on November 21. The Minister's decision not to appeal meant that Altech and about 300 other voice and data carriers could apply for a license to build their own network infrastructure without further risk of their investment being legally challenged.

Challenges Remain with VANS
License Conversions

¶11. (SBU) The DOC decision not to continue appeals paved the way for ICASA to complete the license conversion process by January 19, as required under the ECA. However, ICASA had less than two months to release a call for applicants and announce the final recipients. According to industry analysts, ICASA started the VANS license conversion process

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without finalizing the costs for these licenses. This created uncertainty for the companies interested in acquiring a license. ICASA is also awaiting policy directives on licensing fees from the DOC.

¶12. (SBU) ICASA is now undertaking the difficult task of determining spectrum allocation to accompany these new I-ECNS licenses. Industry representatives expect the final spectrum size of each license to be between 20 and 30 megahertz, what they claim is the minimum required to develop a national network. ICASA only has 120 megahertz worth of spectrum to allocate to all new I-ECNS licensees. In contrast, Telkom is sitting on 50 megahertz worth of spectrum that it was allocated in the pre-liberalization era to develop a WiMax network. Telkom has not made use of this license beyond the testing-phase, but it will not lose its license or "un-used" spectrum as long as it continues testing. Industry analysts complained that Telkom has no short-term incentive to develop a national WiMax network as long as other operators are not allocated the required spectrum to develop national networks. They speculate that Telkom's influence with government might have been the cause of the extensive legal challenges that led to delays in the ICASA VANS conversion process.

¶13. (SBU) Companies interested in developing I-ECNS national networks claim that licensing delays will affect their ability to develop infrastructure in time for the 2010 FIFA World Cup. They emphasize the need to make timely decisions on spectrum allocation so they can finalize financing

packages and begin rolling out their networks. They are under the impression that ICASA will make spectrum allocation decisions by the end of the first quarter of 2009. However, ICASA officials told ICT Officer that spectrum allocation is the greatest area of technical challenge for the regulator and expected the decision-making process to take at least six months.

¶14. (SBU) According to U.S.-based ICT companies, South Africa would not be overwhelmed by new network operators as a result of the VANS/I-ECNS license conversion process, given the high costs of building a national broadband network in South Africa. It is estimated to cost between \$125-200 million to build a national network, so most small players could not afford to do so on their own. One alternative would be for several small players to jointly share the cost of a single network. U.S.-based companies also expressed concern regarding potential Black Economic Empowerment (BEE) shareholding requirements. ICASA considered requiring 51 percent BEE equity ownership for new licensees, which would create market-entry challenges for foreign investors. ICASA appears to be softening its stance on majority BEE ownership requirements, but has not made a decision on this issue yet.

Undersea Cable Projects also Delayed by DOC

¶15. (SBU) Telkom has historically held tight control over the existing fiber-optic cable system along Africa's west coast. This has led to high cost and limited access to international broadband bandwidth. SEACOM, a new U.S.-led undersea fiber-optic cable that will end Telkom's monopoly on high-speed bandwidth, is expected to be operational on Africa's east coast this June despite initial DOC challenges.

U.S.-led SEACOM decided to restructure its consortium
Q U.S.-led SEACOM decided to restructure its consortium shareholding to include 75 percent African ownership when Minister Matsepe-Casaburri made public announcements seeking a minimum of 51 percent African ownership for any cable projects landing in South Africa.

¶16. (SBU) Other Africa-wide cable projects (especially those which would have provided coverage on Africa's west coast in time for the 2010 FIFA World Cup) also suffered delays because of DOC's stance regarding local ownership rules. A Ugandan minister publicly criticized the South African DOC last year for pursuing these local ownership rules, which have adversely impacted other African countries that would have benefited from earlier implementation of these projects.

¶17. (SBU) SEACOM is partnering with Neotel to provide bandwidth in South Africa. SEACOM's relationship with Neotel (and all landing parties in other African countries) is based on an "open access", market-based cost structure. The SEACOM price structure will be significantly lower (the estimates are between one-tenth and one-twentieth of current costs)

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than current satellite or fiber-optic pricing controlled by Telkom.

Policies Unlikely to Change Unless
There is a Change in Leadership

¶18. (SBU) Most industry representatives and analysts believe that the ICT policy environment is not likely to change much while the current Minister of Communications is in power. Post has heard conflicting reports of whether she would retain her position following the spring general elections. Despite widespread industry complaints, she was not replaced when some Mbeki-appointed Ministers were replaced when President Motlanthe took office last fall. (Note: President Mbeki was ousted in September 2008, following a change of

leadership in the African National Congress (ANC).)

¶19. (SBU) Most industry analysts also believe these policies will not change much, nor will ICASA have increased independence to implement regulations that promote liberalization, as long as Telkom has influence over the SAG. Local companies, including smaller entities that are trying to enter the market, claim that Telkom has "pull" with Minister of Communications and other high-ranking officials, who are likely to support any tactics that result in delays in implementation of the ECA. Some industry analysts believe that Telkom is realizing that it will have to begin innovating to survive in a competitive market and is trying to buy time through additional SAG delays in licensing, price determinations, or spectrum allocation for new market entrants.

¶20. (SBU) So far, the legal system has been the only real recourse for companies affected by anti-competitive behavior and problems with ECA implementation. The courts have come out against the Minister of Communications in their interpretation of the ECA, thus forcing the DOC and allowing ICASA to complete the license conversion process.

ICASA Requests Technical Assistance

¶21. (SBU) ICASA has experienced challenges with skills development of its staff. Industry analysts have cited the need for additional training in spectrum management/allocation and pricing determination (including interconnection and call termination fees). ICASA officials told ICT Officer they would benefit from a round of U.S. FCC technical assistance workshops on both issues.

Comment

¶22. (SBU) Progress with liberalization in the South African ICT sector has been slow, but pressures coming from the infrastructure requirements for the 2010 FIFA World Cup have provided the impetus for some policy breakthroughs. Major legislative initiatives to end Telkom's monopoly were only started in 2005, and it has taken a while for true implementation to begin. The DOC has restricted ICASA independence, and new operators have had to turn to the courts to pressure the DOC to recognize the legislative intent of the above-mentioned liberalization policies. ICASA also needs to boost regulatory expertise among its staff to fully implement the ECA.

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